



Prevention of Torture in Europe

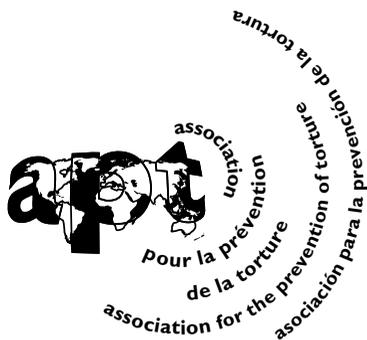
CPT Modus Operandi

by Ursula Kriebaum

Ursula Kriebaum is lecturer in International Law affiliated with the Institute of Public International Law and International Relations of the Law Faculty of the University of Vienna. She is the author of a PhD thesis on the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The European Convention for the Prevention of Torture and its practical arm the European Committee for the Prevention of Torture (CPT) together form a unique international system. The Committee's independent experts can go at any time to any country that has ratified the Convention and visit any place of detention there such as prisons, police stations and psychiatric hospitals. The CPT then reports its findings and makes concrete recommendations for preventing torture and ill-treatment.

This unique approach makes the system worthy of study by everyone concerned with or interested in the treatment of persons deprived of liberty and the conditions in which they are detained. The Association for the Prevention of Torture has therefore decided to publish a handbook on the CPT comprising about ten brochures giving a simple practical account of the Committee's work, mandate and operation, the standards it has built up and the prospects for its co-operation with NGOs.



Prevention of Torture in Europe

CPT Modus Operandi

by Ursula Kriebaum

TABLE OF CONTENTS

FOREWORD	5
INTRODUCTION	7
I. ORGANISING THE VISITS	9
1. Periodic visits	11
2. Visits required in the circumstances	12
II. PREPARING THE VISITS	15
1. Composition of the Delegations	17
2. Selection of the Places	19
3. Notification of the Visits	20
III. CONDUCTING THE VISITS	22
1. Starting the country visit	25
2. Visiting the places where people are deprived of their liberty	26
3. Final meetings and immediate observations	30
IV. REPORTING ON THE VISITS	33
1. Drafting of the Reports	35
2. Publication of the Reports	36
V. FOLLOWING UP THE VISITS	41
VI. GENERAL REPORTS	45
FINAL REMARKS	49

FOREWORD

The Association for the Prevention of Torture (APT) is a non-governmental organisation based in Geneva, whose mandate is to prevent torture and ill-treatment. The APT seeks to ensure that norms forbidding torture are respected, and to reinforce means for the prevention of torture, such as visits to places of detention. Thus, the APT was at the origin of the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (ECPT), which was adopted by the Council of Europe in 1987 and entered into force in 1989. This Convention established the *European Committee for the Prevention of Torture* (CPT), an expert committee which can visit prisons, police stations, psychiatric hospitals, etc., in different European countries and, on the basis of what it sees, make recommendations to the authorities so as to reduce the risk of torture and ill-treatment.

Since 1990, the CPT has visited places of detention in about forty countries in Europe, but its work remains unknown and poorly publicised. This is the reason why the APT is elaborating a practical handbook on the CPT. This handbook deals with the mandate and functioning of the CPT and the standards it has developed concerning the treatment of persons deprived of their liberty and conditions of detention. It is intended to be useful to all those interested in or concerned by the questions of detention conditions and treatment of persons deprived of their liberty: policemen, prison staff, NGOs, lawyers, chaplains, detainees and their families...

This handbook will be composed of around ten booklets, which can be used separately or as a whole, for example in the context of NGO seminars or training sessions for persons directly concerned. The booklets will be published gradually over the next three years and will cover the following aspects of the CPT's activities:

- Brochure 1: Collected texts
- Brochure 2: International and national framework for the combat against torture
- Brochure 3: Mandate and composition of the CPT
- Brochure 4: CPT *Modus operandi*
- Brochure 5: The CPT's standards on police and pre-trial custody
- Brochure 6: The CPT's standards regarding prisoners
- Brochure 7: The CPT's standards concerning specific categories of detainees
- Brochure 8: Co-operation between NGOs and the CPT
- Brochure 9: Practical Guide: Visits to places of detention
- Brochure 10: Country by country: a comparative analysis of the CPT's recommendations

The aim of the present booklet is to describe how the CPT functions in the preparation, conduct and follow-up of visits to the countries.

INTRODUCTION

The underlying idea of the European Convention for the Prevention of Torture (ECPT; hereafter the Convention) is to prevent ill-treatment of persons deprived of their liberty by a public authority. It came into effect in 1989. It does not establish any new norms, but aims to strengthen the obligation contained in Article 3 of the European Convention on Human Rights (ECHR): “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

The Convention provides for a non-judicial preventive machinery. It sets up the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), whose task it is to assist States in finding ways to strengthen the “cordon sanitaire” that separates acceptable from unacceptable treatment or behaviour. The CPT has thus a complementary function to the European Court of Human Rights, which gives rulings on individual complaints.

The CPT visits places of detention to see how detainees are treated. It must identify the indicators and sources of situations which could result in torture or inhuman treatment or punishment of persons deprived of their liberty, in order to recommend improvements to the competent authorities where need be.

The Convention obliges the States Parties to grant CPT delegations unlimited access at any time to any place within their jurisdiction where persons are deprived of their liberty by a public authority (Art. 2 ECPT). This possibility has unquestionably a preventive effect. The CPT can carry out visits without being bound to any prerequisite to initiate the mechanism. Unlike other international mechanisms, it is not dependent on the filing of an individual or State petition¹ and need not have received reliable information concerning systematic violations of human rights² in order to be able to act.

The whole system is based upon the principles of co-operation and confidentiality.

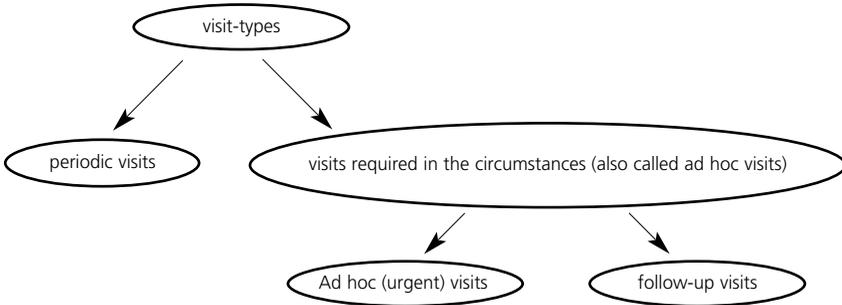
Currently, 41 of the 43 member States of the Council of Europe are bound by the Convention.

In the following booklet, the visiting mechanism of the CPT, from the preparation of a visit to the CPT report and the follow-up of a visit, shall be outlined from the perspective of an outside observer.

I ORGANISING THE VISITS

I. ORGANISING THE VISITS

The CPT implements its essentially preventive function through two kinds of visit (Art. 7 ECPT): 1) periodic visits and 2) visits required in the circumstances, so-called ad hoc visits. Such ad hoc visits can either be urgent actions or follow-up visits. As at 1 December 2001, the CPT had made 87 periodic and 40 ad hoc visits.



1. PERIODIC VISITS

Periodic visits are carried out to all Parties to the Convention on a regular basis. They are a cornerstone of the Convention and one of the pillars of the CPT's preventive work. They put the CPT in a position to follow the situation in a given country on a regular basis and therefore allow for a long-term approach.

Periodic visits are planned in advance. It is for the CPT plenary to determine its program of visits. In its rules of procedure, the CPT agreed to establish and publish, at the end of each year, a program of periodic visits for the following year. The Convention does not fix what the frequency of visits should be. This gives the CPT a certain flexibility as regards the selection of States to visit. It has, however, to take into account several aspects such as the total amount of visiting days at its disposal and the number of places to be visited in a country, and has to ensure, as far as possible, that States are visited "on an equitable basis". Thus the CPT also visits States –although not always on a regular basis– where no disturbing information about ill-treatment has been received.

The first round of visits was decided by lot. From the second round on, the CPT has decided according to its assessment of the need. It must strike a balance between "old States Parties" that have to be visited and "new States Parties". The CPT has decided to give a certain priority to new States Parties. They receive either a periodic or an ad hoc visit during the first year after the entry into force of the Convention for that State. This decision was made as it was considered incompatible with the object and purpose of the Convention to visit a new State Party to the Convention for the first time only after a few years had passed.³

Therefore, the CPT takes into account the possibility of new States becoming parties to the Convention when elaborating its program of visits.⁴ The time lapse since the last periodic visit is an important element in the decision-making process with regard to “old States Parties”. Lastly, questions such as concerns during the previous visit and the general human rights situation in a country are also taken into consideration during the planning process.

Until 1996 the Committee aimed to carry out periodic visits to each Party every two to three years, in addition to any ad hoc or follow-up visits that might be necessary. Since 1996, the Committee has worked on the principle of an average of four years between periodic visits. In practice, the average time between periodic visits is four to five years. Due to the constantly increasing number of States Parties to the Convention and the fact that the CPT’s resources fall short of those needed to attain that objective, it seems unrealistic that the gap between periodic visits can be reduced. In 2001 the CPT organised 17 visits (10 of them periodic) totalling some 160 days.

Through the process of “ongoing dialogue” and recourse to ad hoc and follow-up visits, the CPT aims to maintain the momentum for change between periodic visits, despite a four to five year interlude. Part of this ongoing dialogue are direct, high- level discussions between State authorities and CPT representatives.

The length of periodic visits varies according to the size of the country, the number of places of detention and the prison population. Visits to small countries last roughly one week while those to large countries last up to two weeks.

■ 2. VISITS REQUIRED IN THE CIRCUMSTANCES

The second type of visits foreseen in Article 7(1) are those “required in the circumstances”. They are the CPT’s rapid-reaction capacity and enable it to respond flexibly to different situations. Different kinds of visits are covered by this expression: “ad hoc visits” and “follow-up visits”. However, both are called ad hoc visits in the Explanatory Report, and this term is generally used for both types of visit.

The CPT also uses “ad hoc visits” to give priority to a State which has ratified the Convention too recently for it to be included in its program of periodic visits for that year. This was, for instance, the case regarding Romania in 1995 and Russia in 1998.

A third type of visit mentioned by the Explanatory Report are visits desired by a State Party in order to investigate certain allegations and to clarify the situation. So far, only three visits of this kind have taken place.⁵

In principle, it is up to the whole Committee to decide whether to carry out an ad hoc visit; although the Rules of Procedure (Rule 32.2) provide that, in

emergencies, when the Committee is not in session the Bureau may decide on the matter on the Committee's behalf. In this instance the CPT President shall report to the Committee at its next meeting on any action which has been taken according to this provision.

During the first four years of its work the CPT focused mainly on periodic visits. In 1994 the Committee decided to set aside 25 days for ad hoc visits, thereby emphasising that those visits would often be brief and targeted at particular places of detention or situations, and with very short prior notification of the States concerned. The CPT carried out only one ad hoc visit in 1995, two in 1998 but five in 1994, 1996, 1997, 1999 and 2000. In 2001, 7 ad hoc visits took place.

The CPT decides to undertake an ad hoc visit in response to reliable information indicating that there is an increasing danger of degrading or inhuman treatment of persons deprived of their liberty. It is entitled, but not obliged, to act on information emanating from any source. Therefore, the Committee has sufficient flexibility to respond to allegations which request immediate or additional investigations. When the Committee receives persistent, alarming and reliable information about flagrant violations in places of detention in a given country, it can send a delegation to check up and comment on the situation in the institutions concerned. One could describe these targeted visits as "fire-fighting visits" as their goal is either to extinguish already existing "flames" or to prevent their outbreak.

In addition to the possibility of carrying out an ad hoc visit, the CPT may request, in between visits, that the national authorities concerned immediately provide information or explanations about the general situation in the State, a given place, or an isolated case. This procedure enables the CPT to react expeditiously and effectively when it receives disturbing reports but when the facts at its disposal are not sufficient in themselves to justify an ad hoc visit.

The aim of follow-up visits is to evaluate progress made by the State concerned in implementing the CPT's recommendations as regards specific establishments and/or particular issues. For that purpose it can sometimes be necessary to visit the same detention facility again after a relatively short period of time or to visit other places within the same State in order to be able to assess how the situation has evolved.

Ad hoc visits can also be decided on if a government has failed to provide a response, within the time-limit set by the CPT, either to immediate observations made by the delegation at the end of its visit (States are usually asked to provide a response within three months), or to the CPT's recommendations as laid out in its visit report (usually requested within three months).⁶ A failure to respond in an adequate fashion to immediate observations is furthermore a significant violation of the principle of co-operation set out in Article 3 of the Convention.

II PREPARING THE VISITS

II. PREPARING THE VISITS

The CPT's Secretariat, based at Strasbourg, collects, on an ongoing basis, all information relevant to the CPT's mandate. On the basis of the information received from a variety of sources (official sources, NGOs, the press, individuals), the Secretariat prepares a dossier for each country which is then used by the CPT to plan its visits.

It acknowledges receipt of all communications which are specially prepared for and sent to the CPT. They are brought to the attention of the Committee meeting in plenary session. For reasons of confidentiality it is not possible for the CPT to inform the authors of communications whether and in how far the information has been used. The only possibility for the author to assess whether the CPT has acted on the information submitted is to read either the press release issued by the Council of Europe shortly after a visit has taken place or the report (subject to authorisation for its publication by the government concerned), which both contain a list of all institutions visited.

Once the CPT has decided on its program of periodic visits for the following year, a plan for the timing and duration of the visits and the composition of the delegations has to be formulated. This is done by the members selected for the various visits. They meet, elect a head of delegation and plan the details of the visit, such as:

- exact duration of the visit
- institutions to visit
- areas of competence already covered by members / experts needed (type of expert/how many/who)
- whom to meet during the visits
- need to split up into sub-groups during the visit.

During the preparatory stage, it is important that the States Parties have already nominated a liaison officer and that he or she is co-operating with the CPT in a satisfactory manner. The liaison officer should act as an intermediary between the CPT and the authorities and facilitate all kind of requests presented by the CPT as necessary to carry out its tasks.

1. COMPOSITION OF THE DELEGATIONS

According to Article 7 para. 2 ECPT, visits shall, as a general rule, be carried out by at least two members of the CPT. If the CPT considers it necessary, these members may be assisted by experts and interpreters. On an exceptional basis, visits may be carried out by the full Committee –although this is no longer feasible in practice as the CPT currently has 38 members– or by a single member thereof. So far, the CPT has not made use of either of these two possibilities.

When deciding on the composition of a delegation, due regard has to be paid to the nature of the visit in question, and, in particular, to the type of place or places to be visited. The size of the delegation depends on the number of persons deprived of their liberty in a country and the complexity of the issues which will presumably have to be addressed.

Other factors also have to be taken into account, namely: the different members' time schedules; the need to ensure that the delegations are balanced in terms of expertise and experience; the fact that members shall take part in visits on an equitable basis, and that the members of a delegation have to be able to communicate in a common language; and the financial constraints of the CPT. Since, at the beginning of its work, the CPT had only a very limited number of members with medical expertise, these have participated in an above-average number of visits.

In practice, States have been divided into large ones and small ones according to the size of the population rather than the territory. The delegations which go to large countries generally consist of five to six Committee members, plus one or two experts, two Secretariat members, and, if necessary, an appropriate number of interpreters. For visits to small countries, delegations consist of two to four Committee members plus one expert, one or two Secretariat members and interpreters as required.

In order to ensure that the CPT is, and is seen to be, absolutely impartial, the CPT has decided that the Committee member elected in respect of the State to be visited shall not serve on the delegation. Likewise, a delegation shall not be assisted by an expert who is a national of the State to be visited.

In consultation with the Bureau, the members of the delegation appoint, in advance, one of their number to head the delegation, represent it during the visit and act as spokesperson at the initial and final talks.

During the visits, only CPT members have the authority to pursue contacts with the national authorities. They are responsible for the general conduct of the visit. The experts assisting the CPT in carrying out its visits act on the instructions and under the authority of the Committee. Experts may not conduct discussions on their own with the national authorities. When expressly authorised to do so by the head of the delegation, experts may interview detainees on their own.

The experts' role is to bolster or supplement the delegations with special knowledge or experience in fields such as the treatment of detainees, prison regimes or the treatment of young offenders. The CPT has, with the exception of a few visits, always made use of experts. Their contribution becomes crucial in visits where no, or too few, CPT members in the delegations possess the necessary competence in a particular area of a certain importance in the country at issue –e.g. psychiatric institutions. An analysis of the composition of the delegations⁷ shows that specialists in the fields of psychiatry and forensic medicine have been used mainly.

The Secretariat members accompanying the delegation are responsible for the practical conduct of the visits. They maintain contact with the liaison officer of the State in question as well as with international and national NGOs. Furthermore, they provide the CPT members with information about the institutions to be visited.

■ 2. SELECTION OF THE PLACES

The CPT may visit any place within the jurisdiction of a State Party where one or more persons are deprived of their liberty by a public authority.

For the selection of the places of detention to visit, the CPT is dependent on receiving information as to the existence of places of detention in the States Parties.

The CPT requests all States Parties to provide information on places where persons are deprived of their liberty. According to Article 8 para. 2b ECPT, States Parties are obliged to comply with this request. On several occasions the CPT has recalled this duty as some States Parties did not provide a list of all places of detention, despite several requests. Furthermore, the information should be updated on a regular basis (e.g. annual or biennial). The CPT has elaborated lists of States Parties' detention facilities from the information at its disposal. However, the CPT's visiting competence is in no way limited to those places notified by the States.

The delegation can rely on information from various sources, for instance:

- information provided by NGOs
- information provided by individuals
- information provided by other treaty-monitoring bodies
- reports by national visiting bodies
- suggestions by the "national member"
- media reports.

Reports by NGOs are also a very valuable source of information and have an impact on the CPT's choices. Some NGOs prepare reports on the countries which will be visited during the year and transmit them to the CPT.

The CPT has established a procedure⁸ to deal with information provided by individuals so that it can be used efficiently by the Committee. As stated in Rule 28 of the Rules of Procedure: "The Secretariat shall bring to the CPT's attention communications received containing information submitted for the CPT's consideration, unless the information in question relates to matters which manifestly fall outside its field of competence. Communications received by individual members of the CPT shall be forwarded to the Secretariat. The Secretariat shall keep a register of all communications received. The Secretariat shall send an

acknowledgement of receipt to the authors of such communications. As the mechanism established by the ECPT is not a complaints procedure, such communications are only treated as sources of information and not as complaints. Individuals are not informed of the way in which the CPT has acted upon their information.”

The Committee has also established working relations with international treaty-monitoring bodies and other human rights monitoring bodies with relevance for its mandate. These include the European Court of Human Rights, the International Committee of the Red Cross, the United Nations Committee against Torture, the UN Special Rapporteur on Torture and the United Nations High Commissioner for Refugees. The same is true for national visiting bodies such as prison inspection commissions, ombudspersons, inquiry commissions etc. The national members –although not allowed to be members of the delegation– can also provide valuable suggestions; therefore, they are usually invited to give a short briefing at the first meeting in preparation for a visit.

In the case of ad hoc visits, the selection of places is very often predetermined by the goal of the visit (e.g. to meet specific persons deprived of their liberty or to visit a specific institution). With regard to periodic visits, the delegations cannot –for practical reasons (i.e. primarily the number of detention facilities)– systematically visit all places where persons are deprived of their liberty. The focus of periodic visits being upon general conditions in places of detention, it is necessary to select a representative cross-section. Thus the CPT concentrates on a few institutions and examines the conditions therein thoroughly.

During the first round of periodic visits, visits to police stations and prisons dominated the rest of the institutions visited and the CPT visited only a few psychiatric institutions, closed sections in hospitals, institutions for the detention of minors and institutions for the detention of foreigners. This focus has shifted and the CPT has increasingly visited psychiatric institutions, holding centers for aliens/facilities for immigration detainees, institutions for the detention of minors and military detention facilities, and, most recently, an old people’s home.

■ 3. NOTIFICATION OF THE VISITS

The CPT is required, under Article 8, to “notify the Government of the Party concerned of its intention to carry out a visit. After such a notification, it may at any time visit any place referred to in Article 2 [that is any place where persons are deprived of their liberty by a public authority].”

Neither the Convention nor the Explanatory Report specify the notification period. The CPT has to strike a balance between the need to allow the State Party to prepare for a visit⁹ and the necessity to prevent the covering up of abuses and thus to retain a certain element of surprise. Therefore it has devised a three-step notification process for periodic visits.

- (1) As soon as the CPT has decided upon its program of periodic visits the Secretariat informs the Parties concerned. Shortly afterwards, the Committee issues a short press release indicating the names of the countries, in alphabetical order, where a periodic visit is planned.
- (2) About two weeks before the visit takes place, the State Party is informed of the date when the visit will start, its probable length and the composition of the delegations. The notification has to contain the names of the CPT members, the experts, the interpreters and the members of the Secretariat assisting the CPT during the visit. A State Party may exceptionally declare that a person assisting the CPT is not allowed to take part in a visit to a place within its jurisdiction. Such a right to object does not exist concerning members of the CPT. This formal notification also contains a request that meetings with specified ministers and/or high-ranking officials be arranged.
- (3) A few days before the actual start of the visit, notice is given of the places that the CPT intends to visit. This period is considered to be too short to undertake substantial changes to material detention conditions and regimes. This list of places is provisional and, in the course of the visit, the CPT delegation may, and usually does, decide to visit places without advance notice. These places are, typically, police stations, airport transit areas and other small institutions. In such places of detention, changes in conditions and regimes within a short period of time are more likely to happen and therefore less preparation for a visit is required on both sides.

In the case of ad hoc visits, the CPT notifies the States only shortly beforehand that it plans to undertake a visit, and informs them of the composition of the delegation. It need not specify the time between notification and the actual visit which, in exceptional circumstances, may be carried out immediately after notification.

III CONDUCTING THE VISITS

III. CONDUCTING THE VISITS

So that it can carry out its preventive work as efficiently as possible, the CPT disposes of a broad range of powers which enable it to obtain the necessary information and put together the many isolated impressions so as to make an overall assessment of the situation in the State Party concerned, and to issue recommendations for improvement afterwards.

1. STARTING THE COUNTRY VISIT

During the visits the delegation may make substantial use of accompanying experts. Throughout the visit, the delegation remains in regular contact with the liaison officer. The delegation will therefore be able to contact the liaison officer during the visit on a 24-hour basis in order to obtain information or to solve any problems which may occur.

1.1 Access to the territory

The CPT is entitled (Art. 8 ECPT) to have access to the territory of the State Party concerned (at any time after notification). Regarding access to the territory of a State Party, Article 16 provides that the CPT, its members and the experts assisting it “shall enjoy the privileges and immunities set out in the annex to (the) Convention”. The States Parties can neither refuse nor delay the issuing of a visa for any member of the CPT or an expert assisting it, if there are visa requirements.

According to Article 8 ECPT, the delegation has the right to travel without restriction and to be given unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction.

1.2 Initial meetings

Usually, visits begin with private meetings with representatives of local NGOs and individuals (university professors, lawyers, etc.) who, it is felt, can provide the delegation with valuable recent information. These meetings are generally arranged only a few days before the visit starts. On the following day, meetings are held with the national authorities (ministers and high-ranking officials responsible for the institutions to be visited).

1.3 Access to information

Article 8 (2) ECPT obliges States to provide the CPT with “full information on the places where persons deprived of their liberty are being held” and “other

information available to the Party which is necessary for the Committee to carry out its task” as well as to co-operate with the CPT.¹⁰ Thus information not only about places of detention but also about detained persons is covered by this obligation.

Article 8 ECPT allows for certain conditions to be attached to the provision of information (e.g. regarding access to inmates’ medical records, the presence of a member of the medical service when they are examined). As this is simply a procedural rule which is to be respected by the CPT in gaining access to the information requested, it can not be used to justify an outright refusal to grant access to the information requested, or to grant it under such conditions as would be tantamount to a refusal. A balance has to be found between the interests of the State or third Parties with regard to confidentiality and the CPT’s right to obtain information. In cases where national law represents a potential impediment to the effective provision of information which is necessary for the CPT to carry out its task, it is up to the State concerned to ensure that it can, nonetheless, meet its obligations under the Convention.

In practice, there have been examples, both in police and prison establishments, of delays in obtaining access to documents in detainees’ files, held by the police or the judicial authorities, in being able to consult detainees’ medical records, and in seeing staff lockers, etc. The CPT attributed this to inadequate knowledge about the CPT on the part of the authorities in question. Thus, informing the relevant authorities and staff about the CPT’s existence, powers and objectives is crucial. Preferably, all Parties to the Convention should circulate such information regularly, and issue a reminder when the CPT notifies them of its intention to carry out a visit. In practically all cases where difficulties arose, satisfactory solutions were found following consultations with the liaison officer and the relevant authorities.

■ 2. VISITING THE PLACES WHERE PEOPLE ARE DEPRIVED OF THEIR LIBERTY

After the initial meetings, the delegation immediately sets out to visit places of detention (police stations, prisons, immigration detention centres, airport transit areas, youth detention facilities, closed psychiatric hospitals, military detention facilities, etc). It often splits up into sub-groups. Whenever possible, the sub-groups remain in the same area, thereby facilitating the overall direction of the delegation’s activities. But in some cases, sub-groups operate in different parts of the country concerned.

■ 2.1. Access to the places

Undue delays in gaining access to detention facilities –which occurred in practice with regard both to police and prison establishments– are in contradiction with

the duty to co-operate with the CPT laid down in Articles 3 and 8 of the Convention. Such delays can undermine the effectiveness of a visit. While the CPT estimates that a certain amount of time may be necessary to check the identity of the members of a delegation, it rightly qualified delays of one hour or more as violations of Article 8 ECPT.

Only in exceptional circumstances, and if the requirements of Article 9 ECPT are fulfilled, may a State argue for the postponement of a visit to a particular place of detention. The reasons which can be invoked are enumerated in Article 9(1) ECPT:

- national defence
- public safety
- serious disorders in places where persons are deprived of their liberty
- the medical condition of a person
- an urgent interrogation relating to a serious crime is in progress

So far, Article 9 ECPT has never been invoked. Were it to be invoked, the CPT and the State Party would be obliged to consult immediately “in order to clarify the situation and seek agreement on arrangements to enable the Committee to exercise its functions expeditiously” (para. 2). An unlimited postponement is not possible.

If the postponement concerns a specific person whom the CPT wishes to see, the “arrangements” which have to be made “may include the transfer to another place” (Art. 9(2) ECPT). Until the visit takes place, the Party has to make sure that the CPT is kept fully informed about any person concerned.

■ 2.2. Visiting the place

The delegation (or sub-group) spends on average one and a half to two days in a medium-sized to large institution (400 detainees and more). Visits to places such as police stations or alien holding centres at airports obviously take much less time; visits to the former are sometimes carried out at night. In such cases, the delegations take into consideration the other persons detained during the night.

After being admitted to a detention facility, the delegation often asks the officer in charge a few general questions, in order to get a broad picture of the facility. These questions will normally be about the number of cells, the official capacity, the number of detainees and whether any detainees are being interrogated elsewhere.

Thereafter, the delegation can split up into sub-groups, one or more of which will concentrate on assessing the physical condition of the detention facilities, while the other or others focus on an examination of the custody records and

other files. This greatly enhances the effectiveness and thoroughness of the visit. Whenever possible and appropriate, each of the sub-groups comprises a medical doctor. Regular meetings of the whole delegation in the course of and/or at the end of the day ensure that there is due co-ordination of the activities of sub-groups.

The State may require that the delegation be accompanied by a senior officer during its visits. This is especially true in places which are secret for reasons of national defence. However, the CPT never accepts an accompanying person to be present at the interviews with persons deprived of their liberty.

The delegations visit cells and look closely at the conditions in which detainees are held, observe the attitude of the staff toward the people detained, and examine the records relating to the custody.

The CPT looks at the following important aspects in police custody: safeguards against ill-treatment (e.g.: notification of custody, access to a lawyer, access to a medical doctor, information on rights of the detained persons, complaints procedures, etc.), the material detention conditions and detention regimes.

As regards institutions where people are detained for a longer period, the CPT focuses, depending of course on the type of institution, on the material conditions of detention, safeguards for detainees in specific situations, regime activities, health care services, the situation of special categories of detainees, procedural safeguards for detainees, psychiatric facilities within e.g. prisons, staff-related matters and any other issues it considers important.

■ 2.3. Interviews in private with the detainees

Article 8 (3) establishes the CPT's right to hold interviews in private with persons deprived of their liberty. This right is not subject to any formal requirements such as authorisation by the competent judge/public prosecutor. It is acceptable for the CPT that such persons are informed of the arrival of a CPT delegation and its wish to interview persons deprived of their liberty, but their consent can under no circumstances be a condition for an interview. This would be in clear breach of the Convention.

The delegations ask to be provided with a list of all the detainees presently held at the establishment. Out of hearing and preferably out of sight of the custody officer, members of the delegation may ask some or all of the detainees if they agree to speak to the delegation. Those who give their consent (and are able to do so) will be interviewed by the delegation in private about the conditions of detention, their treatment, whether they have been informed of their rights etc. If necessary, one or more of the detainees will be examined by a doctor.

If it is alleged that a detainee is too intoxicated to be interviewed, the delegation will want to confirm that itself. With regard to detainees who are sleeping, the delegation is entitled to request that they be woken up and asked if they agree to be interviewed, although it may often choose not to do so. In the case of detainees who are a security risk, the delegations listen to the advice of the staff as to the need for security measures. However, the delegation has the final word on what security measures should be taken for the purposes of an interview. For example, the CPT may or may not accept the police's view that a detainee must wear handcuffs during an interview. If any of the detainees are under interrogation during a visit by the CPT, the delegation will usually not interrupt the interrogation. However, if there is a reason to suspect that ill-treatment is taking place during the interrogation or that the interrogation is being used as an excuse to keep the CPT from speaking to one or more particular detainees, the CPT has the right to interrupt the interrogation in order to interview the detainee. The delegation will give special attention to members of vulnerable groups such as women, minors or mentally ill detainees.

The CPT interviews detainees in order to understand how they perceive the general conditions in the establishment visited and the attitude of law enforcement officers and other staff towards them, and to hear any specific grievances they may have. The interviews also enable the delegation to acquire information on how the detainees were treated in earlier places of detention or during the initial arrest, before they arrived at a particular detention facility.

During the interviews delegation members take notes; however, it has been decided to refrain from using tape-recorders or taking photographs.

■ 2.4. Contacts with other people

The delegations also hold discussions with the staff working in the institutions. They seek to find out what kind and level of information the staff receives. They also want to know the staff's views on the procedures in place and the physical and working conditions, and whether there is anything which ought to be improved. Furthermore, they want to learn about the rights granted to the inmates in theory and in practice. A duty for officials to enter into contact with the delegations can be implied from the duty to co-operate (Art. 3 ECPT).

The delegations may also communicate freely with any other person whom they believe can supply relevant information (e.g. family members, medical doctors, lawyers, representatives of NGOs, journalists, etc.). But there is no obligation for such persons or for the detainees to enter into contact with the delegation. The delegation must be given the opportunity to satisfy itself that this is in fact the free will of the person concerned.

2.5. Access to documents

In order to be able to assess the average turnover rate of inmates and the average period of detention, delegations always demand access to the custody registers. Furthermore, they seek to see registers containing information about visits from family members, advocates and medical doctors.

Custody registers also give information about the number of transfers to other places of detention (mostly from police stations to prisons) and releases. The CPT considers that the transfer of persons deprived of their liberty just before a delegation's visit, leaving normally busy places of detention empty, is unacceptable with regard to the obligation to co-operate. Removing persons whom the authorities do not wish the delegation to meet, or denying access to such persons, amount to a flagrant violation of the duties to co-operate with the CPT laid down in Articles 3 and 8 of the Convention.

The delegation also has a right of access to the detainees' medical files. If there is a doctor on duty at the time of the CPT visit, he/she will normally be interviewed. The doctor can discuss in general terms the medical situation at the facility and the content of the medical files. However, if this doctor is asked by the delegation to discuss individual cases, this will only be done with a medically qualified member of the delegation. Medical files, selected at random, can also be looked at to get a sense of the general health situation at the establishment.

3. FINAL MEETINGS AND IMMEDIATE OBSERVATIONS

At the end of the visits, the head of the delegation will, if possible with the rest of the delegation, meet again with the national authorities concerned in order to give "some tentative first impressions of the places of detention visited," as the CPT mentioned in its first general report. This practice has evolved and the final meeting is now used by the CPT as an opportunity to present a concluding statement summarising the CPT's findings and conclusions. During these meetings, the delegation can also make "immediate observations" with regard to particularly urgent matters.

The oral statement is usually confirmed in writing and the CPT requests the authorities to submit a report on the immediate observations within a specified timeframe (usually three months). This information is taken into account when the CPT draws up its visit report.

Such final discussions provide, on the one hand, an opportunity for the authorities to clear up any misunderstandings and, on the other hand, the possibility to take immediate remedial action for situations where an urgent improvement is necessary. Taking into account the considerable amount of time which passes before the visit report is transmitted to the State Party, it is extremely desirable

that a State where cases of torture, ill-treatment or degrading treatment were discovered, is informed of that fact as soon as possible.

Shortly after the visit, the CPT publishes a press release announcing that the visit has taken place. The press release gives the names of members of the CPT delegation as well as the list of places visited, but no information regarding the findings. On one occasion, after the visit to Turkey from April 2001, the press release informing about the visit also contained substantive comments on recent developments in the country.

IV REPORTING ON THE VISITS

IV. REPORTING ON THE VISITS

After each country visit, the CPT has to transmit a report to the government concerned. This report contains essentially two types of information. Firstly, it comprises a description of the different stages of the visit, the facts found out during the visit and the consultations with the authorities of the Party concerned. Secondly, it consists of the recommendations the CPT has considered necessary in order to strengthen the protection of persons deprived of their liberty and proposals which should be brought to the attention of the Party.

A clear distinction is made in the reports between facts the CPT has itself established during the visit and allegations brought to its attention. Observations made by the State Party concerned are also taken into consideration. The Committee may, on its own initiative, seek additional information or observations from the government and is authorised to consult with the State Party. The report transmitted to the government will not necessarily contain all the information obtained during its visits. Names of detainees with whom the CPT was in contact are, as a matter of principle, not mentioned in the report. This is to protect them from reprisals on the part of the authorities.

The structure of the report is now standardised, and contains two main parts, the CPT's findings, by type of place (police stations, prisons, other places), and the recapitulation and conclusions. The appendix contains the summary of the CPT's recommendations, comments and requests for information.

1. DRAFTING OF THE REPORTS

On completion of a visit, the members' and experts' findings are submitted as soon as possible to the CPT Secretariat which prepares a first draft. This also takes into account the notes of the Secretariat members who took part in the visit. This draft is discussed thoroughly (for one to two days) during a delegation meeting at which the experts who made the visit also take part. This draft report adopted by the delegation, including the ad hoc experts, is then transmitted by the Secretariat to all CPT members well in advance of a plenary meeting of the Committee, in view of its adoption at that session.

In 1996, the CPT introduced an accelerated procedure for the adoption of its visit reports. Reports and documents transmitted to the members of the CPT up to two weeks before the session is held are adopted without debate, except for those points in respect of which a discussion has been specifically requested. Documents transmitted later have to be adopted paragraph by paragraph.

After adoption, the report is transmitted to the government concerned about 6 months after the end of the visit. Reports on ad hoc visits are sometimes transmitted within much shorter periods (three months). The transmission of the

report is confidential and is not announced by way of a press release. However, the approximate timing can be worked out. Generally, the report will be transmitted after the first plenary session to be held at least six months after the visit. Plenary sessions take place in March, July and November.

■ 2. PUBLICATION OF THE REPORTS

In principle the information gathered by the CPT in relation to a visit, its report and its consultations with the authorities are confidential. The only two exceptions to this rule are the publication of reports at the request of the government concerned and the possibility for the CPT to issue a public statement under certain circumstances.

Recently, a third exception has emerged. After some high profile visits to Turkey and to the northern Caucasus, the governments accepted the publication of the preliminary observations presented by the CPT at the end of the visit.¹¹ The letters confirming the immediate oral observations were published in the form of a press release and, in one case, as a CPT document together with the government's response. This is an interesting trend, which seems to be a response to both the CPT's and the governments' need to give publicity to the result of the visit, without waiting for the drafting and the publication of the report.

In any case, no personal data is published without the express consent of the person concerned.

■ 2.1. Publication authorised by the State Party

According to Article 11(2), the CPT shall publish its report, together with any comments by the Party concerned, whenever requested to do so by that State Party. If States publish only those passages of a CPT report which are considered positive, the CPT may decide to publish the entire report. The CPT may act in similar fashion if the Party concerned makes a public statement summarising the report or commenting on its contents. In the case of Turkey, where certain media reported that the CPT's delegation commented favorably on the situation at Eskisehir Special Type Prison, the CPT issued a press release clarifying that: "[s]uch reports are figments of the imagination; the CPT's delegation made no comments whatsoever concerning this prison establishment during its visit to Turkey."¹²

Despite the fact that, at the time of drafting the ECPT, it was widely anticipated that governments would be reluctant to authorise publication of the reports, in practice publication has now become the rule rather than the exception. As at December 2001, 74 out of the 111 visit reports drawn up had been published. Many of the remaining reports were only forwarded to the governments shortly before publication of the General Report, and it is expected that they will be

published in due course. However, the manner in which the reports are published and the timing for this vary considerably. Four main patterns in the authorisation of publication can be identified:

- 1) States which authorise publication as soon as they receive the report or shortly afterwards.¹³
- 2) States which authorise publication together with their response.¹⁴
- 3) The authorisation is given at a later and unknown time.¹⁵
- 4) So far no authorisation has been given.¹⁶

Since, so far, virtually all States have authorised the publication of reports, States are under a certain pressure to do so as attention focuses on those few States which fail to authorise, or considerably delay, publication of a report.

The publication of the report is announced in a press release issued by the CPT. Until now, the press releases contained only one sentence announcing that the government concerned had agreed to the publication of the visit report, and giving the date. For the first time in January 2002 the press release on the publication of the 1999 visit to Bulgaria contained some substantive information, both on the CPT's findings and recommendations and on the authorities' reaction.

■ 2.2. The public statement

If a State Party fails to co-operate or refuses to improve the situation in the light of the recommendations made, the CPT may decide to issue a public statement on the matter. Given the importance of such a decision, it has to be taken by a qualified majority of two thirds of its members. Prior to this decision, the State Party must have an opportunity to make its views known to the CPT.

Thus the public statement is used by the CPT as a last resource. So far, public statements have been made on three occasions only, two regarding Turkey, in December 1992 and in December 1996, and one in respect of the Russian Federation regarding the Chechen Republic, in July 2001.

Given the impact that a public statement can have on the co-operation between the CPT and the State Party concerned or even other States, the CPT has to assess carefully whether the conduct of a State requires such a sanction. Such a response is conceivable in the case of intentional, repetitive violations of the duty to co-operate/to improve the conditions. The main goal of a public statement is not to denounce the facts found during the visits but to prevent abuse of the Convention which is based on the principle of co-operation. Thus, simple lip-service without any legal or practical follow-up will not prevent the CPT from interpreting such conduct as a refusal to implement its recommendations. This emanates clearly from the second public statement concerning Turkey. The CPT evaluated the implementation of its recommendations in the legal and practical fields. It concluded that legal norms (e.g. the period for which persons suspected

can be held in police custody) and, even more so, their practical implementation, fell short of the standards recommended by the CPT. This continuing failure to improve the situation in the light of its recommendations and its findings that “resort to torture and other forms of severe ill-treatment remains a common occurrence in police establishments in Turkey”¹⁷ led to the second public statement.

The CPT’s public statement on the Chechen Republic was prompted by the Russian authorities’ failure to co-operate with the CPT on two issues: i) the carrying out of a thorough and independent inquiry into events in a detention facility at Chernokozovo during the period December 1999 to early February 2000; ii) action taken to uncover and prosecute cases of ill-treatment of persons deprived of their liberty in the Chechen Republic in the course of the current conflict.

As regards the content of public statements, considerable discretion is left to the CPT. It must take due account of the need to guarantee that information transmitted in confidence is not made public. Likewise, it must take into consideration the desirability of not revealing information in connection with pending investigations.

V
FOLLOWING UP
THE VISITS

V. FOLLOWING UP THE VISITS

The CPT's reports are considered not to be the end but the beginning of a process. After transmission of the CPT's report, consultations can be held between the CPT and the State Party regarding implementation of the recommendations set out in the report.¹⁸ The purpose of this dialogue between the States Parties and the CPT is not to condemn them but to work towards future prevention of torture and ill-treatment.

The CPT's practice has been to ask the State concerned to submit an interim report giving details of how it intends to implement the CPT's recommendations (usually within six months of receiving the CPT's report), to be followed by a final report providing a full account of action taken to implement the recommendations (usually within twelve months of receipt of the CPT's report). "The State concerned is expected to give an account not only of the legislative and administrative measures taken, if any, but also of the implementation, in actual practice, of the Committee's recommendations."¹⁹ Only recently the CPT adapted this procedure and now sometimes only requests the authorities to provide, within six months, one comprehensive report on action taken in response to its visit report.

It is quite difficult to assess the post-visit dialogue since, so far, communication between the CPT and States in between visits has not been made public. One can therefore only assess its content if reference is made thereto in subsequent CPT reports, or if is submitted to another organ whose documents are public.²⁰

The quality of the State responses varies considerably, ranging from the very detailed and carefully drafted to the superficial.

The CPT itself confessed that it is "far from satisfied with its own record as regards the ongoing dialogue."²¹ It admits that it does not respond "in good time to interim and follow-up reports presented by States visited."²² Combined with the increasing gap between periodic visits to a given country, this could in the long run undermine the effectiveness of the Convention.

To stimulate the ongoing dialogue between the CPT and Parties to the Convention, the Committee indicated in its 7th General Report that it intended to develop the practice of face-to-face discussions on matters of concern between State authorities and representatives of the Committee. Such talks were, for example, held in Spain in July 1997, Rome in February 1998, Sofia in December 1999 and Athens in November 2000.

Close supervision of the implementation of the recommendations would be of utmost importance for the success of the mechanism established by the Convention in the long-term, but it is not clear how far the Committee is really in a position to do this monitoring.

**VI
GENERAL
REPORTS**

VI. GENERAL REPORTS

The Convention requests the CPT to submit an annual general report on its activities. In its first such report it gave a general overview of its work, methods and the preventive nature of its functions. All the reports contain a description of the activities (visits, meetings, follow-up of visits etc.) carried out by the CPT over the previous year. Organisational issues such as CPT membership, the status of ratification of the Convention and its Protocols and administrative and budgetary questions are also covered by the reports.

Already in its first general report the CPT announced that it envisages the gradual compilation of a corpus of standards on the treatment of persons deprived of their liberty. These should offer national authorities some general guidelines in relation to the treatment of persons deprived of their liberty.

So far the CPT has published a short compilation of standards on the following subjects:

- Some substantive issues pursued by the CPT during visits: Police custody and Imprisonment – 2nd General Report on the CPT's Activities (1991)
- Health care services in prisons – 3rd General Report on the CPT's Activities (1992)
- Foreign nationals detained under aliens legislation – 7th General Report on the CPT's Activities (1996)
- Involuntary placement in psychiatric establishments – 8th General Report on the CPT's Activities (1997)
- Juveniles deprived of their liberty – 9th General Report on the CPT's Activities (1998)
- Women deprived of their liberty – 10th General Report on the CPT's Activities (1999)
- Some recent developments concerning CPT standards in respect of imprisonment – 11th General Report on the CPT's Activities (2000).

It has developed a large corpus of standards in relation to safeguards against ill-treatment and detention conditions in the various detention facilities, which are set out in the reports to the States Parties. Furthermore, the CPT's homepage comprises a database where its standards are accessible by keywords.

FINAL REMARKS

The mechanism established by the ECPT provides an essential instrument for the prevention of torture and ill-treatment, if its recommendations are put into practice in good faith by the States Parties. It is a unique opportunity for States to receive an assessment by an independent body of the problems in their respective countries, together with recommendations on how to deal with them.

The possibility for the CPT to undertake on-site visits enables it firstly to give an accurate picture of the different detention facilities visited, and secondly to develop a corpus of standards for detention facilities and of legal safeguards for persons deprived of their liberty. Both the facts found and the corpus of standards can be used by national authorities and the NGO community. Even if authorisation of publication of a particular report is delayed or denied by a particular government, the corpus of standards, at least as far as police stations and prisons and, to a certain extent, psychiatric institutions are concerned, is already very well developed. Therefore, NGOs can rely on these standards in measuring existing conditions and legal provisions.

On the other hand, NGOs, national monitoring mechanisms and the academic community can make a very valuable contribution to the CPT's work by:

- 1) monitoring implementation of the CPT's recommendations at the national level and reporting back to the CPT.
- 2) informing the CPT about evolving problems in the country and suggesting detention facilities which should be visited or problems which should be addressed by the CPT.
- 3) pointing out problems within the legal system which should be taken up by the CPT.

Only with such an interactive approach, with the CPT acting at the international level and NGOs and the academic community at the national one, thus bridging the gap between the international normative net and national reality, can the effectiveness of torture prevention be truly enhanced.

- 1 This is, for instance, the case as far as the European Court of Human Rights and the Human Rights Committee are concerned.
- 2 The UN Committee against Torture needs to receive reliable information indicating that torture is being systematically practised on the territory of a State Party to be able to make a confidential inquiry, with the authorisation of the State concerned. (Art 20 CAT).
- 3 i.e.: Hungary was visited some months after the entry into force of the Convention; the same was true for Bulgaria, Slovakia and Slovenia. Rumania was the subject of an ad hoc visit, as the country had not ratified the Convention at the time of the elaboration of the visit program.
- 4 Thus, in its press release of December 2001 announcing the visits for 2002, the CPT included Armenia and Azerbaijan in its program of periodic visits, although these two countries had not yet ratified the Convention.
- 5 Turkey 1996 (CPT press release from 27.8.1996); Netherlands Antilles 1999 (CPT press release from 5.2.1999); Turkey December 2000 (CPT press release 19.12.2000).
- 6 This happened in the case of Portugal. As Portugal did not provide its response within nine months, and in view of the gravity of the delegation's findings during the previous periodic visit, the Committee decided to carry out a follow-up visit in order to enable a delegation to examine the current situation in the establishment concerned in greater depth.
- 7 1989 to 1997.
- 8 Rule 28 Rules of Procedure.
- 9 Officials which the CPT wants to contact have to be available; special arrangements for high security institutions could be necessary; information about the custodial situation in a country has to be made available to the CPT.
- 10 Art. 3 ECPT.
- 11 Visit to Turkey from 27 February to 3 March 1999: the CPT visited in particular the Island of Imrali where Abdullah Ocalan is being detained. Press release published on 4 May 1999. Visit to the northern Caucasus region of the Russian Federation (Chechen Republic) from 26 February to 4 March 2000. Press release published on 3 April 2000. Visit to Turkey from 16 to 24 July 2000. The preliminary observations and the response of the government were published in document CPT/Inf (2000)19 on 7 December 2000. (On the same day as the report on the 1999 visit).
Visit to Turkey from 10 to 15 December 2000 and 10 to 15 January 2001. The first visit was at the invitation of the Turkish government and was described as "an exercise in mediation". During the second visit the CPT sought information on the prison interventions of 19 and 22 December 2000. Press release published on 16 March 2001. (Report published on 13 December 2001).
In addition, after the ad hoc visit to Turkey from 18 to 21 April 2001, the CPT published a press release containing substantive comments on recent developments in the hunger strike crisis.
- 12 CPT press release from 27 August 1996.
- 13 E.g.: Belgium (1st periodic visit (pv)); Cyprus (2nd pv); Denmark (1st, 2nd pv); Finland (1st pv); Iceland (1st pv); Luxembourg (1st pv); Netherlands (1st pv); Sweden (1st pv, 1st ad hoc visit (av)); Norway (1st av).
- 14 E.g.: Austria (1st pv); France (1st pv, 1st av); Germany (1st pv); Greece (1st pv); Hungary (1st pv); Italy (2nd pv); Malta (2nd pv); Norway (1st pv); Portugal (2nd pv); Slovenia (1st pv); Switzerland (1st, 2nd pv); United Kingdom (1st, 2nd pv); Turkey (2nd pv); Sweden (2nd pv).
- 15 E.g.: Bulgaria (1st pv); Cyprus (1st pv); Ireland (1st pv); Italy (1st pv); Liechtenstein (1st pv); Malta (1st pv); Poland (1st pv); Portugal (1st pv); Rumania (1st pv); San Marino (1st pv); Slovakia (1st pv); Spain (1st, 2nd pv, 1st, 3rd av); Austria (2nd pv); France (2nd pv, 2nd av); Luxembourg (1st av); Greece (1st av November 96, 2nd pv June 97); Turkey (all reports on av and the report on the 1st pv).
- 16 E.g.: Albania (1st pv December 97, 1st av December 98); Bulgaria (2nd pv, April/May 99); Estonia (1st pv July 97, 1st av December 99); Italy (1st av November 96); Romania (2nd pv January 99); Ukraine (1st pv February 98, 1st av July 99).
- 17 CPT/Inf(96)34, §10 (2nd public statement).
- 18 See *infra*: Following up visits, p. 20 s.
- 19 CPT/1st General Report, §32.
- 20 This was the case with Cyprus and the UN Committee against Torture (CAT/C/33/Add.1). Recently, in particular in the case of Turkey, immediate observations and responses from the State have been made public through press releases or as an appendix to the report CPT/Inf (2001)31, Report to Turkey on visits from 10-16 December 2000, 10 to 15 January 2001, 18 to 21 April 2001 and 21 to 24 May 2001.
- 21 CPT/5th General Report, §10.
- 22 *Ibid.*

